

1 recall what was going on.

2 I did not do any extensive 12-hour or  
3 24-hour per day counts.

4 Q. Okay. Referring to the large black and  
5 white map, I don't know what exhibit number it  
6 is.

7 JUDGE TATE: 1.

8 MS. DICKSON: It's Exhibit 1.

9 BY MR. BERRY:

10 Q. On Exhibit 1, to the west of Old Kirk  
11 Road, is that all farmland?

12 A. No.

13 Q. What kind of land is it?

14 A. It's a mix of vacant and some commercial  
15 development on -- immediately to the west of Old  
16 Kirk on the south side of Route 38.

17 On the north side there's some scattered  
18 residential. Then further north in Geneva  
19 there's extensive industrial development in the  
20 Geneva Industrial Park.

21 Q. In the vicinity of Kautz Road and  
22 Route 38?

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1 west, according to this map, there's very  
2 little --

3 MR. SHUMATE: You mean east.

4 MR. BERRY: East, yes, east.

5 THE WITNESS: That's correct.

6 I mean east of -- essentially east of  
7 the Kautz/Route 38/UP intersection area, that's  
8 all going to be developed in the future, but to a  
9 great extent, you know, that's a little longer  
10 term in nature.

11 The development that I referred to  
12 earlier which is west of Kautz Road, south of  
13 Route 38, and east of Old Kirk is something which  
14 is likely to happen within the next several years  
15 based on the city's desire to see that area  
16 developed, based on their extension of sewer and  
17 water service to that area, and based on  
18 conversations that have already existed between  
19 the city, the various city departments and the  
20 property owners who have organized to investigate  
21 development possibilities.

22 Q. But you stated before for other

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1 A. Well, extending all the way west from New  
2 Kirk Road to Kautz Road, yes.

3 Q. And even further to the west?

4 A. Further to the west on Route 38 is a  
5 mixture of -- I'm sorry, I -- pardon me, I had my  
6 directions mixed up.

7 As we go west, we're really in the City  
8 of Geneva proper in terms of, you know, the old  
9 district. There's a mixture of commercial,  
10 industrial, residential, you name it.

11 Q. Maybe -- no, okay, I see.

12 So there is a lot of unused land in and  
13 around Old Kirk Road, undeveloped land?

14 A. There's undeveloped land but I wouldn't  
15 use that description.

16 I don't think there's a lot of  
17 undeveloped land in the sphere that I see Old  
18 Kirk Road existing within.

19 Q. Well, you can see the development around  
20 Old Kirk Road itself where you can see where the  
21 UP Railroad comes through where there's a term UP  
22 and Old Kirk Road, that area, but from that point

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1 improvements that depends upon the economy, does  
2 it not?

3 A. Well, I have this conversation all the  
4 time, and when people ask me how my business is  
5 going at this time of our state of the nation and  
6 I have to admit in the Chicago area that  
7 development activity has barely slowed a notch  
8 despite the economy.

9 Developers are still preparing plans,  
10 they're still purchasing land, they're still  
11 proceeding with infrastructure improvements,  
12 they're still proceeding with private building  
13 and capital improvements, and that's just the  
14 nature of the Chicago area.

15 Particularly in the location like this  
16 which is adjacent to and within the sphere of  
17 influence of the City of Geneva.

18 Q. But that's still conjecture? We don't  
19 know that's going to happen in the next two  
20 years?

21 A. Well, if I could maybe extrapolate where I  
22 think you're heading with your question, in my

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1 record that the petition that has been presented  
2 may not follow the format that's required by the  
3 State of Illinois and certainly by it's -- the  
4 documentation as it shows itself does not  
5 include -- is not limited to those people that  
6 live in the jurisdiction of the respondent.

7 JUDGE TATE: Thank you.

8 Respondent's Exhibits 1 through 16 are  
9 admitted into evidence.

10 (Whereupon, Respondent's  
11 Exhibits 1 through 16 were  
12 admitted into evidence.)

13 JUDGE TATE: Is there anything else for the  
14 record?

15 MR. SHUMATE: Yes, your Honor. It's very  
16 short. I have Rick Sturm here. As you know  
17 Jerry Linneman has retired and there have been --  
18 only been about, oh, two or three developments  
19 since we had our first hearing which was in 1991  
20 on this case. It's -- it was September 24, 2001.  
21 That's what I meant to say. If I said 1991, I  
22 apologize.

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1 township were in negotiations to work toward a  
2 stipulation, a stipulation which we believe was  
3 agreed to until it was then presented before some  
4 of the constituents that were represented by the  
5 Township Commissioner.

6 And, in addition, we have received a  
7 letter from the DuPage Railroad Safety Council  
8 which is the county that's literally adjacent to  
9 this property indicating their support for the  
10 closure of the crossing, and I would like to have  
11 those -- that -- the discussion about how we did  
12 cooperate with the township, and I think the  
13 record should show that what we proposed with  
14 regard to the closing and the remuneration and  
15 the work that we would do, and I think the record  
16 would need that to show clearly our good faith to  
17 work with the township to work out an amiable  
18 closure of this crossing.

19 JUDGE TATE: Mr. Sturm testified two weeks  
20 ago, did he not?

21 MS. DICKSON: Yes, your Honor.

22 MR. SHUMATE: Yes, your Honor.

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1 MS. DICKSON: We haven't been at it that long.  
2 MR. SHUMATE: September 24, 2001, and I'd like  
3 to call Mr. Rick Sturm, if I could.

4 JUDGE TATE: As a rebuttal witness or what?

5 MR. SHUMATE: Well, we have been in -- well, I  
6 could -- yes, I'll call it rebuttal witness.  
7 That will be fine.

8 MS. DICKSON: Your Honor, we'd object to Union  
9 Pacific calling any witnesses at this point, and  
10 September 21st, and that is the time in which  
11 we're looking at this petition for railroad  
12 crossing closure.

13 Union Pacific had the full and fair  
14 opportunity to present any and all evidence that  
15 it had in support of its petition.

16 At this point there would be no further  
17 evidence that they should be able to provide  
18 based on the rules that we -- we're governed by  
19 when we entered into this hearing.

20 MR. SHUMATE: I disagree with that, your  
21 Honor, in that there were many times that this  
22 case was continued because the railroad and the

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1 JUDGE TATE: No, I think that any further  
2 additions to the record will be in the form of  
3 short briefs.

4 MR. SHUMATE: Okay. Thank you, your Honor.

5 MS. DICKSON: Thank you, your Honor.

6 JUDGE TATE: You're welcome.

7 And those will be due -- how long do you  
8 need?

9 MR. SHUMATE: It will just be in the form of a  
10 letter with a couple attachments, your Honor. I  
11 don't need much time at all.

12 JUDGE TATE: Nothing too long.

13 MR. SHUMATE: No.

14 JUDGE TATE: Keep it, let's say, five to ten  
15 pages at most.

16 MS. DICKSON: Your Honor, as I've never  
17 been -- Mr. Shumate has had more experience than  
18 I, are you -- is it my understanding you're  
19 looking to this in the form of a closing argument  
20 or statement of what the evidence provided and  
21 what the result --

22 JUDGE TATE: What you usually put in a brief,

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## SHEET 1

1 BEFORE THE  
2 ILLINOIS COMMERCE COMMISSION  
3 IN THE MATTER OF: )  
4 UNION PACIFIC RAILROAD COMPANY, )  
5 vs. ) No. T01-0040  
6 TOWNSHIP OF GENEVA, STATE OF )  
7 ILLINOIS and ILLINOIS DEPARTMENT )  
8 OF TRANSPORTATION )  
9 Petition for an order of the )  
10 Illinois Commerce Commission for )  
11 the closure of Old Kirk Road, )  
12 public grade crossing )  
13 DOT #174 986H at Milepost 33.75 )  
14 on the Geneva Subdivision, City )  
15 of Geneva, Geneva Township, Kane )  
16 County, Illinois )  
17  
18 Chicago, Illinois  
19 January 28, 2004  
20  
21 Met pursuant to notice at 9:00 a.m.  
22  
23 BEFORE:  
24 MS. JUNE B. TATE, Administrative Law Judge.  
25  
26 APPEARANCES:  
27  
28 MR. MACK H. SHUMATE, JR.  
29 101 North Wacker Drive, Suite 1920  
30 Chicago, Illinois 60606  
31 Appearing for Respondent;  
32  
33 BOND DICKSON & ASSOCIATES, by  
34 MS. MARY DICKSON  
35 203 East Liberty Drive  
36 Wheaton, Illinois 60187,  
37 Appearing for the Applicant;

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1 I N D E X  
2 Witnesses: Direct Cross Re- Re- By  
3 Thomas Andryuk 306 326 349 355 363  
4 Rick Sturm 365 381  
5 Dick Untch 384 400  
6  
7 E X H I B I T S  
8 Number For Identification In Evidence  
9 Petitioner's  
10 No. 3 294 405  
11 Petitioner's  
12 No. 4 294 405  
13 Petitioner's  
14 No. 5 294  
15 Petitioner's  
16 No. 6 294  
17 Petitioner's  
18 No. 7 294  
19 City's  
20 No. 1 337 405  
21  
22

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1 MR. ROBERT BERRY  
2 527 East Capitol Avenue  
3 Springfield, Illinois 62701  
4 Appearing for Staff  
5 (via satellite)  
6  
7  
8  
9  
10  
11  
12  
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14  
15  
16  
17  
18  
19  
20  
21  
22 SULLIVAN REPORTING COMPANY, by  
Tracy L. Ross, CSR

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1 (Whereupon, Petitioner's  
2 Exhibit Nos. 3-7 were  
3 marked for identification  
4 as of this date.)  
5 JUDGE TATE: In accordance with the rules and  
6 regulations of the Illinois Commerce Commission,  
7 I now call Docket T01-0040, Union Pacific  
8 Railroad Company versus Township of Geneva, State  
9 of Illinois and Illinois Department of  
10 Transportation, petition for an order of the  
11 Illinois Commerce Commission for the closure of  
12 Old Kirk Road, public grade crossing DOT  
13 No. 174 986H at Milepost 33.75 on the Geneva  
14 Subdivision, City of Geneva, Geneva Township,  
15 Kane County, Illinois.  
16 Your appearances, please.  
17 MR. SHUMATE: My name is Mack Shumate,  
18 S-h-u-m-a-t-e, I'm an attorney with the Union  
19 Pacific Railroad Company, 101 North Wacker Drive,  
20 Suite 1920, Chicago, Illinois 60606, and I'll  
21 have a brief opening statement.  
22 MS. DICKSON: Mary Dickson, D-i-c-k-s-o-n,

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1 attempted to do was provide that documentation in  
2 the form of written testimony. Objections were  
3 made to that in writing by the Township.

4 However, the Railroad believed then and  
5 it still believes that this is definitely  
6 relevant to the subject matter of closing this  
7 crossing. And rather than ending this particular  
8 proceeding with the record that has already been  
9 produced, I believe that the information is  
10 relevant, especially in light of the fact that it  
11 is a fact that the City of Geneva is -- would be  
12 a proper party -- a proper party, not the only,  
13 but a proper party in the case in that the  
14 crossing itself is in the City of Geneva.

15 And that, I believe the record should be  
16 supplemented with the additional facts that have  
17 come to light after the original hearing was  
18 marked heard and taken.

19 MS. DICKSON: May I make a short response?

20 JUDGE TATE: Yes, you may.

21 MS. DICKSON: Again, that is not what the  
22 petition for rehearing asks for. It does not ask

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1 City of Geneva, this petition has been on file  
2 now for almost -- well, more than three years and  
3 to discover just now that this railway  
4 right-of-way may have some -- the City of Geneva  
5 may have some evidence or some interest in this  
6 proceeding when the matter has been pending, and  
7 I believe the City of Geneva has had knowledge  
8 that the proceedings have been pending since  
9 2001. It doesn't appear to me, at least, to be a  
10 proper basis to allow new evidence to come before  
11 this proceeding at this time.

12 MR. SHUMATE: If I may reply to that, your  
13 Honor.

14 Attached to our request for rehearing  
15 and the documentation that was filed at the close  
16 of evidence when we briefed this matter was  
17 additional evidence which we were led to believe  
18 at the close of the hearing we were allowed to  
19 put in, which the Township in its replies to the  
20 brief stated that we were not permitted to do  
21 that.

22 And it was our clear understanding at

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1 to supplement the record in any way with any new  
2 evidence and it was not a claim of new evidence  
3 that the ICC issued its order allowing rehearing  
4 to be granted.

5 Further, Mr. Shumate indicates now what  
6 he wants to do is just add to the record those --  
7 that information or evidence from Mr. Sturm that  
8 your Honor would not allow to be supplemented at  
9 the last hearing and yet this morning he  
10 indicates that his two witnesses will be Dick  
11 Untch from the City of Geneva and Tom Andryuk  
12 from the UP.

13 Neither of these witnesses were  
14 witnesses brought to the attention of your Honor  
15 at the previous hearing nor were they witnesses  
16 that were added within the UP's request for  
17 rehearing. Rather, if Mr. Shumate believes that  
18 Mr. Sturm should testify, again, that would be  
19 over our objection and over the clear ruling of  
20 the Court at the last hearing.

21 As to the UP's new found knowledge that  
22 this crossing may be within the purview of the

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1 the close of the last hearing on this case that  
2 any additional information would be submitted in  
3 writing to be placed on the record. So we did  
4 supplement the record after the close of the  
5 testimony, we did produce additional  
6 information -- fact information relevant to this  
7 case and that is -- I think it's a  
8 mischaracterization to say that the only reason  
9 for our request for a rehearing was -- excuse me,  
10 that a reason for the request for rehearing --  
11 strike that.

12 That we would not want to put additional  
13 information in. We did try to put additional  
14 information in at the close of the hearing  
15 because Rick Sturm was not allowed to continue  
16 with verbal testimony and we were told that any  
17 additional information should be submitted to  
18 this hearing body in the form of writing and  
19 additional facts were attached to the filings we  
20 made.

21 And we would like to supplement those  
22 facts, additionally, as more and more information

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1 Q. And what is your current job title?  
 2 A. Manager of field engineering.  
 3 Q. So you were in the engineering department  
 4 at the Union Pacific Railroad?  
 5 A. That is correct.  
 6 Q. Does the territory for which you are  
 7 responsible include the location of both Kirk  
 8 Road and Old Kirk Road, which is the subject of  
 9 today's hearing?  
 10 A. Yes, it does.  
 11 Q. What are your current duties and  
 12 responsibilities?  
 13 A. I'm primarily responsible for projects  
 14 that the Railroad is involved with or involved in  
 15 of a public nature, so anything that is presented  
 16 in public works.  
 17 Q. Any crossing closure or modification of a  
 18 closed -- a crossing would be a public works  
 19 project?  
 20 A. Yes, sir.  
 21 Q. Have you had an opportunity to visit the  
 22 site which is the subject of today's hearing?

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1 Q. Approximately how long is that video?  
 2 A. Ten minutes.  
 3 Q. Do you have it with you today?  
 4 A. Yes, I do.  
 5 MR. SHUMATE: Your Honor, we would like to  
 6 show this video that Mr. Andryuk made. He can  
 7 narrate for the Court and also for the Illinois  
 8 Commerce Commission. It shows the area that  
 9 we've talked about for several years now and we  
 10 haven't had much in the way of prints, but it  
 11 does show what the area looks like. We'd like to  
 12 show that if we could.  
 13 JUDGE TATE: Proceed.  
 14 (A videotape was played.)  
 15 THE COURT: Is there speech on the video?  
 16 THE WITNESS: Yes there is, Judge.  
 17 MR. SHUMATE: There is. We can take it off  
 18 and he could narrate it, if you'd like it that  
 19 way.  
 20 JUDGE TATE: The court reporter can't take  
 21 down both.  
 22 MR. SHUMATE: Well, then what we should do is

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1 A. Yes, I have.  
 2 Q. And when was the last time you visited  
 3 that site?  
 4 A. I drove over the grade separation  
 5 yesterday. I did a more thorough -- on-site  
 6 review was done approximately two weeks ago.  
 7 Q. Did you make a record of your last visit  
 8 to the site and the surrounding area?  
 9 A. Yes, I did.  
 10 Q. Did you have a self-guided tour? How did  
 11 you record it?  
 12 A. The last review was a walking review  
 13 wheeling off the distances of the various lengths  
 14 of the intersections and the adverse distance if  
 15 the Old Kirk Crossing was closed, so using a  
 16 wheeled calibration device.  
 17 Q. And this record or tour of the area, how  
 18 did you make -- did you make a recording of it?  
 19 A. The visit prior to that, we made a video  
 20 recording of it.  
 21 Q. And did you make that video recording?  
 22 A. Yes, I did.

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1 turn the voice off on that and he can dictate  
 2 what he sees and we'll submit everything offered  
 3 into evidence.  
 4 THE WITNESS: This is about 25 feet south and  
 5 this is 25 feet south of the crossing. The car  
 6 going by is Roosevelt Road. And then just  
 7 taking, basically, a 365-degree pan clock-wise.  
 8 Q. What direction is that?  
 9 A. This would be facing east, now southeast,  
 10 just giving a general lay of the land. This is  
 11 south on Old Kirk Road and there is a grade  
 12 separation at Kirk Road to the west about 6 or  
 13 700 feet down the track. And there are the  
 14 industries --  
 15 Q. Speak up louder.  
 16 A. Those are the industrial development that  
 17 are in the northwest quadrant of the crossing  
 18 area and then back to the other perspective.  
 19 This next sequence -- driving north on  
 20 Roosevelt Road, the traffic lights ahead are on  
 21 the Kirk Road intersection and Roosevelt Road and  
 22 now we'll be turning onto Old Kirk Road headed

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1 the west side and that's looking eastward down  
 2 Cherry Lane where -- there's a lot of traffic as  
 3 it exits. The stadium events have been going  
 4 down there and using Old Kirk Road as an access  
 5 to the -- to Roosevelt Road.  
 6 Q. Now, you referenced in that video two  
 7 welding facilities. The one welding facility had  
 8 indicated that they wanted to preserve access --  
 9 Mr. Andryuk, on the video, you said at the end of  
 10 Reed Road there was a welding supply outfit  
 11 industry?  
 12 A. Yes, that's correct.  
 13 Q. And is that the welding supply company  
 14 that had indicated that it had trucks that had  
 15 used Roosevelt Road both east and west in order  
 16 to --  
 17 MR. BERRY: Excuse me. I can't hear any  
 18 sound.  
 19 JUDGE TATE: Oh, I'm sorry. Now can you hear  
 20 us?  
 21 MR. BERRY: I can.  
 22 MR. SHUMATE: Can you hear me now?

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1 yesterday, it is my understanding that that is  
 2 not a dedicated road.  
 3 Q. Currently it appears to be a private road;  
 4 is that correct?  
 5 A. That is correct.  
 6 Q. So there -- it would be in the nature of a  
 7 driveway that would allow them access to Old Kirk  
 8 Road; is that correct?  
 9 A. That is correct.  
 10 Q. And, now, when you were on that -- I'll  
 11 call it "Reed Road," you did go underneath the  
 12 Kirk Road overpass; is that correct?  
 13 A. Yes.  
 14 Q. Do you know approximately what that  
 15 clearance is there?  
 16 A. I would have to guess.  
 17 Q. Don't guess, then. It was -- it was  
 18 adequate for your truck?  
 19 A. More than adequate. We were driving a  
 20 three-quarter ton pickup and there was ample  
 21 clearance for that size truck as well as larger  
 22 vehicles.

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1 MR. BERRY: That's fine.  
 2 MR. SHUMATE: I'll redo the question.  
 3 BY MR. SHUMATE:  
 4 Q. Mr. Andryuk, on the video after you went  
 5 on Reed Road and you went underneath Kirk Road,  
 6 underneath the bridge there was a welding supply  
 7 industry; is that correct?  
 8 A. That is correct.  
 9 Q. Is that one of the welding supply  
 10 companies that indicated it desired to maintain  
 11 access to Roosevelt Road both in an east and  
 12 westerly direction?  
 13 A. That is my understanding, yes.  
 14 Q. And currently, can they make left- and  
 15 right-hand turns at the intersection of Old Kirk  
 16 Road and Roosevelt Road?  
 17 A. Yes, they can.  
 18 Q. Now, on your video, you traveled on a road  
 19 that was referred to as Reed Road. To your  
 20 knowledge, do you know whether or not that is a  
 21 dedicated road?  
 22 A. As of information that we received

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1 Q. And for the -- did you observe any  
 2 tractor-trailers on the west side of that --  
 3 A. I did. If you noticed in the video there  
 4 was a trailer parked behind the welding supply  
 5 facility.  
 6 Q. So the height of the bridge would  
 7 accommodate a tractor-trailer at the time?  
 8 A. That's the only access.  
 9 Q. On Reed Road?  
 10 A. That's correct.  
 11 Q. Are you aware of any plans to extend Reed  
 12 Road further to the west and to the north to  
 13 intersect with Route 38?  
 14 MS. DICKSON: Objection. Relevance.  
 15 MR. SHUMATE: How is that relevant? The  
 16 problem that the industry has is they say they  
 17 can't to get to Roosevelt Road if there's a  
 18 modification made to that intersection and I'm  
 19 asking whether there are other -- any plans that  
 20 he's aware of to have an alternative exit, right  
 21 of ingress and egress, if you will, on Roosevelt  
 22 Road.

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1 increased.

2 Q. Mr. Andryuk, can a motorist currently make  
3 a left-hand turn at the intersection of Old Kirk  
4 Road and Route 38 as the roads are currently  
5 configured?

6 A. Yes.

7 Q. To your knowledge, have there been any  
8 proposals to consider establishment of a traffic  
9 light at the intersection of Old Kirk Road and  
10 Roosevelt Road?

11 A. Yes.

12 Q. And what is the basis of that?

13 A. Based on this newspaper article from  
14 December the 12th in the Daily Herald, there is a  
15 reference to the city planner, Mr. Tom  
16 Swierczewski and initially I contacted him to  
17 verify some of the plan itself that was presented  
18 in that article as to its accuracy, and during  
19 that conversation initially he indicated that --

20 MS. DICKSON: Objection to any statement that  
21 the city planner may have made on the basis of  
22 hearsay.

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1 the Kirk Road overpass to generally serve the  
2 commercial and residential interests in and  
3 around Old Kirk Road?

4 A. Yes, sir.

5 Q. This area that is depicted on the  
6 newspaper article, is that commonly -- do you  
7 know what that's commonly referred to as?

8 A. I believe it's Geneva's East Gateway.

9 Q. Now, Mr. Andryuk, this is the first time  
10 that you've testified in this particular matter;  
11 is that correct?

12 A. Yes, sir.

13 Q. And are you familiar with a gentleman by  
14 the name of Gerald Linneman?

15 A. Yes, sir.

16 Q. And did you take his position when he  
17 retired?

18 A. Yes, I did.

19 MR. SHUMATE: Your Honor, I have no further  
20 questions.

21 JUDGE TATE: Miss Dickson?

22 MS. DICKSON: Thank you, your Honor.

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1 JUDGE TATE: Sustained.

2 BY MR. SHUMATE:

3 Q. Independently of your conversation, is  
4 there any other information that you have or any  
5 documentation that you've seen that has shown a  
6 proposal for a traffic signal at Old Kirk Road  
7 and the intersection of Route 38?

8 A. Yes. I've seen the most current proposal  
9 before the City of Geneva in the development of  
10 that area and it does include a traffic signal at  
11 Old Kirk Road and Route 38.

12 Q. In your opinion as a public works engineer  
13 for the Union Pacific Railroad Company, if the  
14 area north of the Union Pacific's tracks is  
15 developed as has been proposed in the newspaper  
16 with both commercial and industrial uses, would  
17 it be your recommendation to maintain Old Kirk  
18 Road or to close Old Kirk Road?

19 A. I would recommend that it be closed.

20 Q. In your opinion as a member of the  
21 engineering department of the Union Pacific  
22 Railroad, could access roads be constructed under

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1 CROSS-EXAMINATION

2 BY

3 MS. DICKSON:

4 Q. Mr. Andryuk, you've testified that you  
5 believe -- I believe you testified that you  
6 believe that there is the potential for building  
7 an access road that would connect Kirk Road to  
8 New Kirk Road by means of an extension or  
9 development of Reed Road; did I understand that  
10 correctly?

11 A. Restate that, please.

12 Q. Do you believe that it is possible to  
13 connect Old Kirk Road to New Kirk Road through  
14 the development of Reed Road?

15 A. No. Not connect it to Kirk Road, no.  
16 That roadway would pass under Kirk Road.

17 Q. And where would that access road connect  
18 to?

19 A. This -- the plans that we viewed from the  
20 City of Geneva show a roadway being, basically,  
21 an extension of Woodfield Road, which is on the  
22 western side of Kirk Road and be -- being

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1 development that could occur there.  
 2 Q. Okay. Looking at what you're pointing to,  
 3 what road is it that you're speaking of?  
 4 A. I'm speaking of the roadway -- the  
 5 east/west roadway that runs just below D and D-1  
 6 and the roadway that runs east/west below D and E  
 7 and connects in between Kirk Road and Old Kirk  
 8 Road.  
 9 Q. Is this road that is shown on the plan  
 10 just to the south of D and E currently  
 11 constructed?  
 12 A. No, ma'am.  
 13 Q. And is the road that you had discussed, I  
 14 think you said between B and C, is that currently  
 15 constructed?  
 16 A. No, ma'am.  
 17 Q. And even what you haven't testified to,  
 18 but the road between F and F is that road  
 19 constructed?  
 20 A. No, it is not.  
 21 Q. So at present isn't it fair to say that  
 22 this is just a development proposal?

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1 Geneva has brought them with him today and you  
 2 will have access to them.  
 3 MS. DICKSON: Judge Tate, may we ask for the  
 4 tender of these plans for the purposes of  
 5 Mr. Andryuk's testimony?  
 6 JUDGE TATE: Is your witness going to present  
 7 those plans, Mr. Shumate?  
 8 MR. SHUMATE: No. The City of Geneva is going  
 9 to present them as facts in this case when he's  
 10 called as a witness.  
 11 JUDGE TATE: And he's your witness?  
 12 MR. SHUMATE: I will take him as my witness,  
 13 but...  
 14 JUDGE TATE: Or did you want to call him as  
 15 your witness?  
 16 MR. SHUMATE: You may, if you want.  
 17 MS. DICKSON: No, I don't have any intention  
 18 to call him as a witness, but in that Mr. Andryuk  
 19 was allowed to testify to plans that aren't  
 20 available to be -- to cross-examine him, I would  
 21 ask if the City of Geneva has the plans, that  
 22 they be marked, at least, for identification so I

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1 A. This is a conceptual proposal.  
 2 Q. Which has not been approved by the City of  
 3 Geneva?  
 4 A. I don't think it's been presented to the  
 5 board yet.  
 6 Q. Do you know if there's been any land  
 7 acquisition begun in preparation of construction  
 8 of any of these proposed roads?  
 9 A. I don't know that.  
 10 Q. So this proposal is just that, it may  
 11 never become reality; isn't that true?  
 12 A. It's a proposal.  
 13 Q. You testified that you saw plans provided  
 14 by the City of Geneva relative to the  
 15 installation of a traffic signal at Old Kirk Road  
 16 and Route 38, do you have those plans with you  
 17 today?  
 18 A. I do not.  
 19 Q. Do you -- is there any way that you can  
 20 designate those plans in any fashion to allow any  
 21 other person to look at what you saw?  
 22 A. I believe the gentleman from the City of

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1 can discuss those plans with Mr. Andryuk.  
 2 MR. SHUMATE: I have no objection to that.  
 3 JUDGE TATE: Do we have the plans?  
 4 MR. DICK UNTCH: What we have here, your  
 5 Honor -- this is Dick Untch, director of  
 6 community development for the City of Geneva, 22  
 7 South First Street, Geneva, Illinois 60134. What  
 8 we have is a document that's been presented by  
 9 the developer in this case. It consists of an  
 10 access and traffic analysis for the proposed  
 11 development. I wasn't a part of the conversation  
 12 that Mr. Swierczewski of my staff had with Mr.  
 13 Andryuk, but I believe that Mr. Swierczewski  
 14 spoke specifically about the proposal for control  
 15 of traffic associated with the proposed  
 16 development. And there are two options  
 17 concerning --  
 18 MS. DICKSON: I'm just going to interrupt you  
 19 for one moment, Mr. Untch.  
 20 Rather than having Mr. Untch testify, I  
 21 would like to have Mr. Andryuk state specifically  
 22 what it was that he looked at and we will focus

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1 necessary for that?

2 A. Illinois Department of Transportation and,

3 perhaps, Kane County.

4 Q. In looking at this conceptual plan and

5 comparing it to your recollection of the area, is

6 what is shown on this conceptual plan the current

7 configuration of Old Kirk Road as it

8 approaches --

9 A. No, I don't know.

10 Q. -- Route 38?

11 A. No.

12 Q. What's different about the current

13 configuration of Old Kirk at its intersection of

14 Route 38?

15 A. There is a change of the alignment.

16 Shifting the road to the east making the

17 intersection with Roosevelt Road further to the

18 east.

19 Q. Further to the east of the intersection of

20 New Kirk and Roosevelt?

21 A. Yes.

22 Q. And, again, this is a proposal and not

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1 a traffic signal, I believe they deemed it wisest

2 to move it further east.

3 Q. So to be more specific about what you

4 said, it's your understanding if Old Kirk Road

5 retains its current alignment, it does not meet

6 the criteria for signalization at Roosevelt Road?

7 A. I don't know what that criteria is, so I

8 can't answer that.

9 Q. I'm just asking your understanding. I

10 believe you testified to that.

11 A. Apparently so, if they thought it

12 necessary or a better -- a better chance to meet

13 the criteria that they -- that that alignment was

14 designed in order to get a traffic signal

15 installed at Kirk Road.

16 Q. In your conversations or from any research

17 that you have done, do you have any idea as to

18 when, if ever, this proposed reconfiguration may

19 be constructed?

20 A. You'd have to ask the City what their time

21 frame is on that.

22 Q. You don't have any knowledge as to time

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1 actual fact as we sit here today?

2 A. That is correct.

3 Q. Do you know if any land acquisition has

4 begun to change the alignment of Old Kirk Road as

5 it intersects with Roosevelt Road?

6 A. I'm not aware of that.

7 Q. In your opinion -- or do you have an

8 opinion as to whether any land acquisition would

9 be necessary for this alignment to change?

10 A. I don't know, ma'am.

11 Q. And if the alignment of Old Kirk Road and

12 Roosevelt Road was not changed, are you aware of

13 any plan to install signalization at Old Kirk and

14 Route 38?

15 A. Well, I believe -- no, initially, based on

16 my discussion with Mr. Swierczewski who works for

17 Mr. Untch, there was a signal proposed at the Old

18 Kirk Road intersection as it -- as the alignment

19 now stands. But based on opposition or the

20 difficulty to get it past the criteria for the

21 Illinois Department of Transportation and in

22 order for them to allow the intersection to have

340

1 frame?

2 A. No, I don't.

3 Q. And as Old Kirk Road is currently meeting

4 with Roosevelt Road, it is not currently

5 signalized; is that correct?

6 A. Old Kirk Road?

7 Q. Yes.

8 A. No, it is not.

9 Q. You testified that in your opinion the

10 crossing should be closed if additional

11 development occurred. I believe you stated it

12 was because of an increase in traffic which may

13 be engendered by this development, would that be

14 a correct statement of what you testified to?

15 A. Yes.

16 Q. If this development does not occur, would

17 it still be your opinion that this crossing

18 should be closed?

19 A. Yes.

20 Q. And are you aware that there has never

21 been any accident history at the Old Kirk Road

22 and the railway crossing?

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1 with all the street areas, I believe that the  
2 traffic engineer who gave testimony previously  
3 did the routing of that -- how that would have to  
4 occur in whether they go up Elm Street or Lynn  
5 Road or one of these other streets that's named  
6 here (indicating) and come around and make --  
7 they'd have to go north and then west and then  
8 south onto Kirk Road, I believe is the route --  
9 routing that he laid out at that time.

10 Q. And doesn't that rerouting adversely  
11 impact the residents and businesses and visitors  
12 or employees of those businesses in this area if  
13 the crossing is closed?

14 A. Yes, it does.

15 MS. DICKSON: I have no further questions,  
16 Judge Tate.

17 JUDGE TATE: Mr. Berry?

18 MR. BERRY: Yes, I just have one or two.

19 CROSS-EXAMINATION

20 BY

21 MR. BERRY:

22 Q. You mentioned that something you saw in

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1 A. There is nothing -- they're in the  
2 planning stages. My understanding is that the  
3 City is in the process of working through those  
4 details with IDOT currently to overcome any of  
5 the barriers or hurdles or design issues for  
6 signalizing the -- a variety of intersections at  
7 Old -- at Route 38, both on the west side and the  
8 east side.

9 Q. Is Route 38 a state highway?

10 A. Yes.

11 Q. So it's under the jurisdiction of the  
12 Illinois Department of Transportation?

13 A. Yes, sir.

14 MR. BERRY: That's all I have.

15 JUDGE TATE: Any redirect?

16 MR. SHUMATE: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY

19 MR. SHUMATE:

20 Q. Mr. Andryuk, you referred to the alignment  
21 of Old Kirk Road and Mr. Berry asked about the  
22 realignment to the east. Approximately on this

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1 one of the plans showed a shifting of Old Kirk  
2 Road to the east. Is that away from the welding  
3 plant, away from Old Kirk Road overpass?

4 A. Yes. Basically, Old Kirk Road -- as  
5 you're headed north, about half-way between  
6 Roosevelt Road and the grade crossing would take  
7 a jog easterly for whatever the geometry is and  
8 move the intersection of Old Kirk Road and Route  
9 38 further to the east.

10 MR. SHUMATE: Your Honor, this is depicted on  
11 the plan and I think it could be shown on the  
12 overhead projector for Mr. Barry's view.

13 MR. BERRY: That's all right. That's the only  
14 question I had on that.

15 BY MR. BERRY:

16 Q. Just one other thing I wanted to check. I  
17 just wanted to be sure that I was clear that, did  
18 you say the City had a project that was in the  
19 planning stage but had not yet been approved by  
20 the appropriate authorities to put traffic  
21 signals at the intersection of Old Kirk Road and  
22 Route 38?

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1 preliminary conceptual site plan, approximately  
2 how much to the east is the jog to the east of  
3 Old Kirk Road as proposed? An approximation?

4 A. Well, I don't think -- I don't know if  
5 there's a scale on this drawing.

6 Q. Yes. Right here (indicating).

7 A. I would say approximately 40 to 60 feet.

8 Q. And that would be from the center line of  
9 the road to the center?

10 A. From the current center line of Old Kirk  
11 Road to the new alignment.

12 Q. You were asked a question with regard to  
13 design plans for the intersection of Kirk Road  
14 and Roosevelt Road. Have you seen any final  
15 design plans for that?

16 A. I've seen the most current plans for that.

17 Q. Are they final design plans?

18 A. I do not know.

19 Q. Have you seen any funding plans for that  
20 particular intersection?

21 A. I have not seen any funding plans.

22 Q. Do you know of any funding plans?

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1 Roosevelt Road and Old Kirk Road, a vehicle can  
2 make a left- and a right-hand turn; is that  
3 correct?

4 A. That is correct.

5 MR. SHUMATE: That's all the questions I have,  
6 your Honor.

7 JUDGE TATE: Any other questions for  
8 Mr. Andryuk?

9 MS. DICKSON: Yes. I just have a couple.

10 RE-CROSS-EXAMINATION

11 BY

12 MS. DICKSON:

13 Q. Other than the general proposition that a  
14 grade separation crossing means that there won't  
15 be any interaction with cars, other than the fact  
16 that a grade separation may be safer because of  
17 that, why else would it be safer to close this  
18 crossing? Are you aware of any accident history  
19 at the crossing?

20 A. I'm not familiar with the accident  
21 history.

22 Q. Does the crossing have signalization?

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1 proximity to the grade separation and --

2 Q. Isn't that the only reason the UP wants to  
3 close this crossing?

4 A. Well, the Federal Railroad  
5 Administration --

6 Q. Excuse me, I'm asking you about the Union  
7 Pacific Railroad now.

8 A. Repeat the question, please.

9 Q. Isn't the only reason the Union Pacific  
10 Railroad seeks to close this crossing is because  
11 in its opinion it's redundant because of the  
12 grade separation at New Kirk?

13 A. I believe the -- no, that is not correct.  
14 The safety issues are a primary factor at all  
15 grade crossings.

16 Q. And what are the safety issues involved at  
17 Old Kirk Road?

18 A. Any time you have a train and vehicle  
19 traffic intersecting one another, it is a safety  
20 issue.

21 Q. Is the UP attempting to go close every  
22 at-grade crossing in the state of Illinois?

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1 A. Yes, it does.

2 Q. Is the visibility at this crossing such  
3 that vehicles attempting to traverse the crossing  
4 have the opportunity to view a train coming from  
5 either direction?

6 A. Yes. It has adequate visibility.

7 Q. Does the traffic crossing this -- the  
8 railroad crossing, is it of such a volume that it  
9 would require closing the crossing?

10 A. I don't understand the question.

11 Q. Are you aware of what the traffic volume  
12 is that utilizes the crossing?

13 A. Based on the last traffic study that was  
14 presented in the previous testimony, I believe it  
15 was in the 6 -- close to 700 vehicles a day.

16 Q. And is there anything that indicates to  
17 you because of the volume of the vehicles --  
18 let's assume it's 6 or 700 vehicles a day -- is  
19 there anything given that volume that leads to  
20 the conclusion that the crossing should be  
21 closed?

22 A. Well, again, it is redundant in its

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1 A. That would be very optimistic on their  
2 behalf.

3 Q. It isn't?

4 A. They are not trying to, that would be  
5 unrealistic.

6 Q. So is the UP's concern for safety only at  
7 this grade crossing?

8 A. No, not at all.

9 Q. Those same safety concerns, though,  
10 haven't prompted the UP to seek to close every  
11 other grade crossing?

12 A. No. It -- no.

13 Q. Does -- are you familiar with the criteria  
14 required to be met to close a grade crossing?

15 A. Somewhat.

16 Q. From your somewhat familiarity with those  
17 criteria, in your opinion, does the UP have  
18 evidence necessary to meet each of those  
19 criteria?

20 A. I don't believe this meets the vehicular  
21 traffic pattern. It meets the adverse distance  
22 criteria, but I do not -- and it meets the train

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